



January 8, 2016

VIA CM/ECF

The Honorable Charles R. Breyer
United States District Court for the Northern District of California
San Francisco Courthouse, Courtroom 6 - 17th Floor
450 Golden Gate Avenue
San Francisco, California 94102

Re: *In re: Volkswagen "Clean Diesel" Mktg., Sales Practices, and Prods. Liab. Litig.*, MDL 2672
(This Document Relates to All Cases); Application for Lead/Co-Lead Counsel or PSC

Dear Judge Breyer:

As the founding partner of Northern California-based Kershaw, Cook & Talley, PC ("KCT"), and pursuant to this Court's Pretrial Order No. 2, I hereby submit this Application to serve as Plaintiffs' Lead or Co-Lead counsel or serve on Plaintiffs' Steering Committee ("PSC"). My firm has a well-established California presence and excellent national reputation as a leading plaintiffs' class action firm representing automobile consumers and auto dealerships nationwide. I recently tried to a successful jury verdict a breach of contract class action (breach of the Sales and Service Agreement) on behalf of all Ford heavy truck dealers against Ford Motor Co. On the other hand, under circumstances where settlement skills are important, I personally negotiated and settled a very large MDL against American Honda on behalf of a class of almost 2,000 Honda dealerships defrauded by their manufacturer's senior management in the allocation of Honda automobiles. Over the past three decades, I have achieved excellent class wide results on behalf of both injured consumer and auto dealership class members, including recoveries on their behalf in excess of a billion dollars in damages and settlements.

As the Court observed, the scope of this controversy is massive, implicating foreign manufacturers and well over half a million 2.0- and 3.0-liter Volkswagen (including Audi and Porsche) diesel vehicles in the United States. During the December 22, 2015 status conference, the Court emphasized its desire for an efficient and essentially fast-tracked MDL given the public concessions VW has made with respect to certain liability facts. Accomplishing that goal will require leadership that can work in harmony with one another and with opposing counsel. Over the past 30 years of participating in and managing complex litigation, I have found that my strongest professional attribute is an ability to work and get along with disparate personalities and bring people together. On many occasions after concluding a certain piece of litigation, I have been asked by opposing counsel to co-counsel other cases with them. I therefore believe my firm could effectively direct this MDL within a streamlined leadership structure and work collaboratively with other experienced Court-selected firms. For many years I worked in an hourly rate environment developing a contingent fee practice and am very sensitive to the issue of excessive attorneys' fees and costs diminishing the class recovery. For the reasons discussed below, the Court should appoint KCT as Lead Counsel or to a position on the steering committee.

I. Professional Experience In Leading And Prosecuting MDLs And Class Actions

KCT's practice focuses on litigating complex class actions, MDLs and coordinated proceedings in state and federal courts throughout the United States. I have been in complex litigation for over thirty years. I supervised the Consumer and White Collar Fraud Division of the Sacramento County District Attorney's Office, was managing partner and chair of the complex class action litigation practice group at Kronick, Moskovitz, Tiedemann & Girard, P.C., and was founding partner and chair of the class action practice group at Kershaw, Cutter & Ratnoff, LLP. I am AV Preeminent-Rated, have been selected as a Northern California Super Lawyer for eleven years in a row, was awarded "Best of the Bar" by the *Sacramento Business Journal* and received "Top Lawyer" honors by *Sacramento Magazine*.

Significantly, KCT has litigated and resolved class actions on behalf of automobile consumers and dealerships against domestic and foreign defendants, and has served as lead counsel on behalf of a

class of automobile dealerships in a nationwide MDL against a foreign car manufacturer. Because of its unique depth and array of vehicle-related class action experience, KCT knows this area of law, understands the nuances of consumer and dealership-related litigation, and is well-qualified to lead or serve on the steering committee in this case.

For example, I served as plaintiffs' lead class counsel in a nationwide MDL on behalf of automobile dealerships in *In re American Honda Motor Co., Inc. Dealerships Relations Litigation*, MDL No. 1069 (D. Md.) ("*American Honda*"). The MDL was comprised of thousands of cases and involved claims of fraud against American Honda and Honda Motor Company. *American Honda* required discovery throughout the United States and in other countries, including Canada and Japan. Ultimately the court approved a global settlement of over \$360 million divided among myriad competing interests which I negotiated. I was also appointed co-lead counsel on behalf of a certified nationwide liability class of Ford heavy truck dealerships in *Bayshore Ford Truck Sales, Inc. v. Ford Motor Co.*, Case No. 99-cv-741 (JCL) (D.N.J.) ("*Bayshore Ford*"). I served as co-lead trial counsel in a month-long bellwether trial on behalf of eleven dealerships, resulting in a \$45 million jury verdict after thirteen years of litigation. At the conclusion of trial, Judge Jose Linares thanked my firm "for the efficient and hard-working manner in which you handled this case, and how respectful you were to the Court" as well as how respectful counsel was to one another. He stated that our firm did a "tremendous job" and that our clients were "well served." I also served as lead class counsel in *Lussier Enterprises v. Subaru of NE*, Case No. 1:99-cv-00109-PB (D.N.H.), a certified class on behalf of dealers against their OEM for improprieties in the vehicle allocation process.

KCT has also litigated multiple complex vehicle defect class cases on behalf of consumers. For example, in *Nguyen v. BMW of North America, LLC*, Case No. 3:10-cv-02257 (N.D. Cal.), my firm represented a putative class of consumers and lessees who alleged that BMW had unlawfully altered software after discovering design flaws in certain BMW models. The case resulted in a nationwide settlement valued at approximately \$211,470,000 on behalf of approximately 200,000 class members. Furthermore, I have served as lead counsel, co-lead counsel or on committees in numerous other MDLs and state coordinated proceedings. For example, I served as co-lead counsel in *In re American Online Spin-Off Accounts Litigation*, MDL No. 1581 (C.D. Cal.), involving thousands of consumers billed for "Spin-Off Subaccounts" without their authorization. The case resolved through a nationwide settlement in conjunction with Illinois state court proceedings. I also served as lead class counsel in *Campbell v. PricewaterhouseCoopers, LLP*, Case No. 06-CV-02376-OKK-GGH (E.D. Cal.) ("*PwC*"), an overtime class action which was appealed to the Ninth Circuit three times before resolving last year. I also served as lead class counsel in a nationwide products liability class action against Ethicon, Inc. in *In re Vicryl Sutures Litigation*, JCCP No. 4148 (Super. Ct. Alameda County), *Neely v. Ethicon, Inc., et al.*, Case No. 1:00CV569 (E.D. Tex.), and as defense counsel, I picked the jury in the seminal California class action case *Richmond v. Dart Industries, Inc.*, 196 Cal. App. 3d 869 (1987) resulting in a successful defense verdict while representing Dart Industries. In addition, I currently serve on the Discovery Committee in *In re Stryker Rejuvenate and ABG II Hip Implant Products Liability Litigation*, MDL No. 13-2441 (D. Minn.) and on the PSC in the *DePuy ASR Hip System Cases*, JCCP No. 4649 (Super. Ct. San Francisco County). I am also lead class counsel in *McLean v. State of California, et al.*, Case No. 34-2012-00119161 ("*McLean*") and co-lead counsel in *Baird v. John Chiang, State Controller*, Case No. 34-2010-00081797 ("*Baird*"), both wage and hour cases involving statutes and issues of first impression currently pending in Sacramento Superior Court.¹

II. Names And Contact Information Of Judges

- Hon. J. Frederick Motz, U.S. District Court Judge; District of Maryland; 101 W. Lombard Street, Baltimore, MD 21201, Courtroom 5A, Tel: (410) 962-0782 (*American Honda*);
- Hon. Jose L. Linares, U.S. District Court Judge; District of New Jersey; 50 Walnut Street, Newark, NJ 07101, Courtroom MLK 5D, Tel: (973) 645-6042 (*Bayshore Ford*);

¹ A copy of KCT's abbreviated firm resume is attached hereto as Exhibit A.

- Hon. Troy L. Nunley, U.S. District Court Judge; Eastern District of California; 501 I Street, Sacramento, CA 95814, Courtroom 2, 15th Floor, Tel: (916) 930-4163 (*PwC*);
- Hon. Susan Illston, U.S. District Court Judge; Northern District of California; 450 Golden Gate Avenue, San Francisco, CA 94102, Courtroom 10, 19th Floor, Tel: (415) 522-4070 (*BMW*);
- Hon. Raymond M. Cadei, Judge of the Superior Court; Sacramento County Superior Court; 800 9th Street, Sacramento, CA 95814, Department 54, Tel: (916) 874-7847 (*McLean*).
- Hon. Robert Hight, Presiding Judge of the Superior Court; Sacramento County Superior Court; 800 9th Street, Sacramento, CA 95814, Department 47, Tel: (916) 874-5487 (*Baird*); and
- Hon. Alan Perkins, Judge of the Superior Court; Sacramento County Superior Court; 800 9th Street, Sacramento, CA 95814, Department 35, Tel: (916) 874-7885 (*Baird*).

III. Willingness And Ability To Immediately Commit To Time-Consuming Litigation

I am willing and immediately available to commit time and resources to this MDL. An experienced team of attorneys and staff at my firm will be dedicated to this litigation, and I have strong relationships with other firms in this MDL that have significant experience in automobile class actions (e.g., Wigington Rumley Dunn; Wexler Wallace; Bressler Amery & Ross; Labaton Sucharow) all of whom are willing to devote significant time and resources to this case. An example of my capacity and willingness to devote significant resources to large complex litigation is my firm's prosecution of the *Bayshore Ford* class action over the course of fifteen years which we ultimately prosecuted through trial, as well as *PwC*, an overtime class action litigated over nine years through several appeals to the Ninth Circuit. I am well aware of the significant responsibilities required of lead counsel, recognize that this case will be time-consuming, and will dedicate the resources necessary to successfully manage and prosecute this case.

IV. Willingness And Ability To Work Cooperatively With Other Counsel

My past professional experiences and decades of practice alongside numerous other plaintiffs' attorneys in nationwide class actions demonstrate a commitment and ability to work cooperatively with others. Over the course of several MDLs and state coordinated proceedings, I have been a part of leadership groups and committees comprised of firms from throughout the country, often with diverse and competing views of the litigation at hand. In each of these instances, I have worked cooperatively and productively with co-counsel and opposing counsel to advance the case. If appointed, I would foster cohesive and cooperative relationships with other counsel and conduct this litigation in a respectful, collegial and ethical manner.²

V. Access To Resources To Prosecute The Litigation In A Timely Manner

KCT is adequately funded to perform and sustain all of the obligations required of lead counsel and I am prepared to commit the full resources of my firm to prosecute this MDL. KCT is also committed to ensuring that this litigation is conducted efficiently, without plaintiffs' counsel accruing unnecessary lodestar and expenses. KCT believes that, while this MDL is significant, it can be conducted economically and in a manner that maximizes recovery to the class.

VI. Willingness To Serve As Lead Counsel, A Member Of A Steering Committee, Or Both

KCT is prepared to serve as Lead or Co-lead Counsel or as a steering committee member.

VII. Category Or Categories Of Plaintiffs The Applicant Wants To Specifically Represent

KCT seeks to represent all consumers and/or automobile dealerships.

Respectfully submitted,

/s/ William A. Kershaw

Enclosures
cc: All Counsel via ECF

² A list of firms supporting KCT's Application is attached hereto as Exhibit B.